P.C. Agenda: 05-22-13 Item No. 3.c.

# STAFF REPORT PLANNING COMMISSION

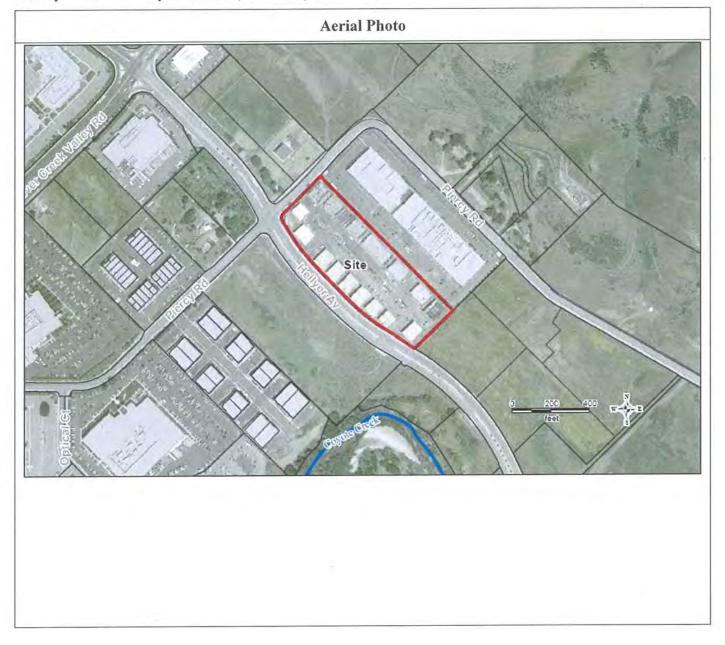
**FILE NO.: CP13-022** 

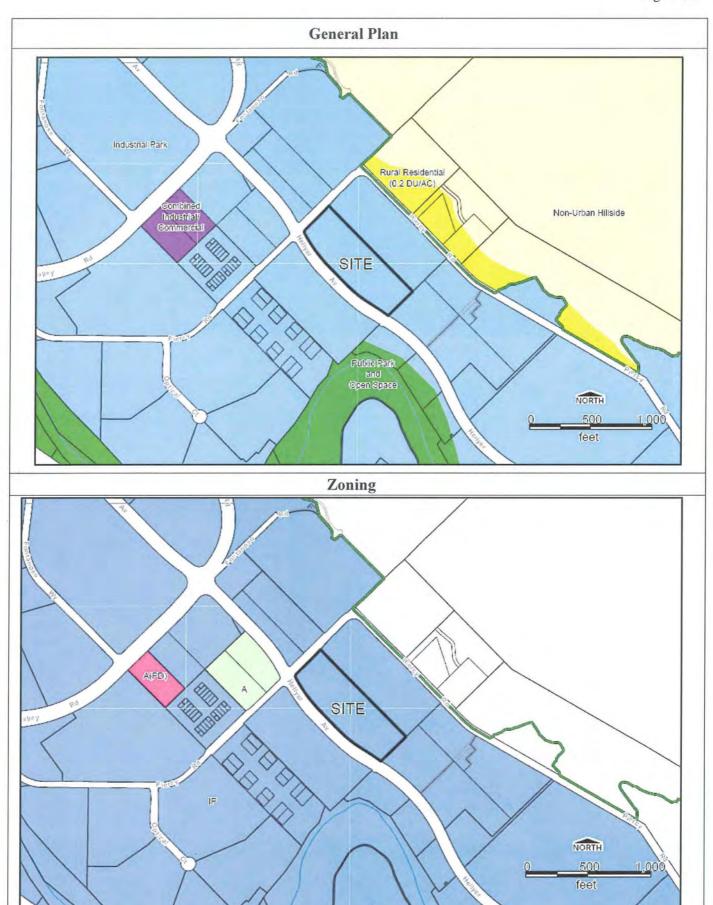
Submitted: 04/22/12

PROJECT DESCRIPTION: Conditional Use Permit to allow a 6,093 square-foot medical office use of an existing industrial condominium office building (Building J/100, 150, & 175) in a 98,000 square-foot industrial park office development on a 7.4 gross acre site.

Zoning	IP- Industrial Park
General Plan	Industrial Park
Council District	2
Annexation Date	05/06/1999
Historic Resource	No
Redevelopment Area	Edenvale

**LOCATION:** East side of Hellyer Avenue, and approximately 500 feet south of the intersection of Piercy Road and Hellyer Avenue (6080 Hellyer Avenue).





#### RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit for the following reasons, and include the findings and conditions as shown in the attached draft Resolution.

- 1. The project conforms to the Envision San Jose 2040 General Plan.
- The proposed project complies with all applicable provisions of the IP Industrial Park Zoning District.
- 3. The project is compatible with the surrounding land uses.
- Sufficient parking will be provided for the proposed uses and other future allowed uses within the Industrial Park complex.

#### BACKGROUND

On April 22, 2013 John Moniz, represensting the property owner, Ramiar Shirani, applied for a Conditional Use Permit to allow a 6,093-square-foot medical office in an existing industrial condominium office building (Building J/100, 150, & 175). This industrial building is located within a larger 7.4-acre industrial park office development known as Hellyer Commons. The entire site is located in the IP – Industrial Park Zoning District. The IP Zoning District allows by right medical offices and clinics under the Commercial Support provision, if the Commercial Support uses do not occupy more than 20% of a given building. However, if the applicant wishes to go over the 20% limitation, then a Conditional Use Permit (CP) is required. In this instance, the applicant requests to convert the entire building for medical office use.

The 7.4 acre Hellyer Commons is located at the southeast corner of Piercy Road and Hellyer Avenue. The site is currently developed with sixteen one-story office condominium buildings, a parking lot and landscaping. Conditional Use Permits File No. CP09-057, CP09-058, CP09-059 and CP09-061 were approved by the Planning Commission on July 14, 2010 to allow four other buildings in the industrial park complex to include medical offices. Conditional Use Permit File No. CP10-053 was approved by the Planning Commission on November 17, 2010 to allow a fifth building on the subject parcel to include a medical office. CP12-050 was approved by Planning Commission on January 9, 2013 to allow a medical use in another building in the complex. The subject site is surrounded by a church to the northeast, vacant industrial park properties to the southeast and southwest, and a single family residence to the northwest.

On May 14, 2010, a Special Use Permit (SP10-014) was approved to allow an off-site alternating parking arrangement between Hellyer Commons, LLC and the Family Community Church on the 8.9 gross acre site to the northeast. This permit allows Hellyer Commons to use up to 316 parking spaces of the Church's parking lot during specified business hours. Two existing driveways connect the subject sites and allow easy assess to the proposal additional parking.

#### ANALYSIS

The primary areas analyzed for the Conditional Use Permit include: 1) conformance to the Envision San Jose 2040 General Plan, 2) conformance to the applicable provisions of the Zoning Ordinance, 3) compatibility of the proposed use with surrounding land uses, and 4) compliance with the California Environmental Quality Act.

#### San Jose 2040 General Plan Conformance

The subject site is designated as Industrial Park on the Envision San Jose 2040 General Plan Land Use/Transportation Diagram. Areas identified exclusively for Industrial Park uses usually contain a very limited amount of supportive and compatible commercial uses providing support for the needs of businesses and their employees in the immediate industrial area. The General Plan states that commercial/office uses should be located within a larger industrial building to protect the character of the area and maintain land use compatibility. The proposal complies with the intent of these policies since the proposed medical offices would be contained within existing industrial buildings requiring little modification thereby not precluding the potential conversion back to industrial park uses if the market conditions change in the future.

#### **Zoning Ordinance Conformance**

The entire Industrial Park Campus is zoned IP – Industrial Park, in conformance with the associated General Plan land use designation. The IP Zoning District allows by right General Business offices and Medical Office and Clinic uses under the Commercial Support provision, if those Commercial Support uses do not occupy more than 20% of a given building. However, if the applicant wishes to go over the 20% limitation, then a Conditional Use Permit (CP) is required. In this instance, the applicant would like the entire building for Medical Office use; hence, the subject Conditional Use Permit application.

#### Parking

Development of the subject site occurred pursuant to a Special Use Permit (SP04-064), and subsequent Special Use Permit Amendment (SPA04-064-01), which provided 298 spaces on site. This number of parking spaces is intended to support a variety of office and industrial park uses, which are parked at either 1 space per 250 square feet, or 1 per 350 square feet, respectively. The required parking per the Zoning Ordinance for the proposed medical offices would be 1 space per 250 square feet of net floor area, which in large quantities could lead to insufficient parking. With a mix of office and industrial uses, which, as previously stated, require different parking ratios, there could be a situation of insufficient parking if all the buildings are occupied. Hence, on May 14, 2010, a Special Use Permit (SP10-014) was approved to allow an off-site alternating parking arrangement between Hellyer Commons, LLC and the adjacent Family Community Church. This permit allows Hellyer Commons the use of up to 316 parking spaces in the church parking lot during specified business hours when the activities at the church are minimal. Based on the net floor area, if the entire industrial condominium complex, was parked at 1 parking space per 250 square feet for medical use, 334 parking spaces will be required. As the site currently provides 314 spaces, (which is slightly more than was approved with SP04-064), and with the additional 316 parking spaces in the church parking lot, the project site has 630 available parking spaces, more than exceeding the required parking.

Additionally, the Special Use Permit Amendment (SP04-064-01) limits the hours of operation of the industrial buildings, such that they shall be closed and not in operation at all on Sunday, Monday through Friday after 7:00 p.m., and on Saturday after 5:00 p.m. to allow the full parking lot to be used for the adjacent church. The proposed medical offices are aware of these restrictions, which will be memorialized in their permit (see attached draft resolution).

Two existing driveways connect the subject sites and allow easy assess to the additional parking. As noted on the plan set, the subject site along with the neighboring church site will have enough parking stalls to accommodate the required parking ratios for the wide variety of allowed uses in the IP zoning district. Therefore, the proposed use will not impact, or require further modification of, the previously approved Church project.

#### Land Use Compatibility

The subject site was constructed as an industrial park and is comprised of 16 condominium buildings ranging from 4,400 square feet to 12,000 square feet in size, the majority being 5,800 square feet. The IP-Industrial Park Zoning District allows various industrial uses and a significant amount of office-type uses. However, due to the scale and configuration of the buildings, it is more likely that they will be primarily occupied by general business and professional offices, commercial support and some smaller scale research and development uses, as is the case today. The buildings themselves have significant window areas and do not lend themselves to more intense industrial processes. As such, a medical office is a suitable use at this location and is compatible with the other uses on site.

The industrial park uses beyond the project boundary are primarily office, and research and development uses, and are not heavy industrial in nature. The introduction of limited medical office uses into this largely commercial/office setting is not expected to negatively impact the operation of adjacent industrial businesses. A limited amount of manufacturing, including the use of potentially hazardous materials, does occur in the broader area.

#### **Environmental Review**

The project was found to be exempt from environmental review under Section 15301(a), Existing Facilities of the CEQA Guidelines, which exempts the leasing, licensing, or minor alteration of existing public or private facilities, involving negligible or no expansion of use. Only minor modifications would be made to the interior of the existing the structure. The project is in an area where all public services and facilities are available to allow for maximum development permissible under the General Plan, and the area in which the project is located is not environmentally sensitive.

#### CONCLUSION

Based on the above analysis, staff concludes that the proposed medical offices conform to the intent of the General Plan and the requirements of the Zoning Ordinance. The proposed medical office use is compatible with surrounding land uses, and has enough parking to accommodate any future variety of allowed uses. No major modifications are proposed to the buildings which could be used in the future for industrial/office purposes depending on market demand.

#### PUBLIC OUTREACH

Notices of the public hearing for this project were sent to all property owners within 500 feet of the subject property. A sign describing the project has been displayed at the project site. The Planning Commission Agenda is posted on the City of San José website, which includes a copy of the staff report and staff has been available to discuss the project with members of the public. No member of the public has made a comment or objection to the proposed project.

Project Manager: Kristinae Toomians Approved by:

Owner/Applicant:	Attachments:	
Owner:	Draft Resolution	
Ramiar Shirani	Plan Set	
841 Blossom Hill Rd, Ste 202		
San Jose, CA 95123		
Applicant:		
John Moniz		
8055 Camino Arroyo		
Gilroy, CA 95020		

#### RESOLUTION NO.

Resolution of the Planning Commission of the City of San José granting, subject to conditions, a Conditional Use Permit to allow a 6,093 square foot medical office use, within an existing condominium office building (Building J/Suite 100, 150, & 175) in a 98,000 square-foot industrial park office development on a 7.4 gross acre site located on the east side of Hellyer Road, approximately 500 feet southeast of the corner of Piercy Road and Hellyer Avenue (6080 Hellyer Avenue).

#### FILE NO. CP13-022

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSÉ:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on April 22, 2013, an application (File No. CP13-022) was filed for a Conditional Use Permit for the purpose of allowing a medical office on that certain real property (hereinafter referred to as "subject property"), situate in the Industrial Park Zoning District, located on the southeast corner of Piercy Road and Hellyer Avenue, San José, and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, "Hellyer Commons, LLC, 6080 Hellyer Avenue, Suite 100, 150, & 175 Conditional Use Permit for Medical Office (Dentistry)" dated April 11, 2013. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

PC Agenda: 05-22-2013 Item No. 3.c. WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this Planning Commission;

#### NOW, THEREFORE:

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

- 1. The 7.4 gross acre site is located on the southeast corner of Piercy Road and Hellyer Avenue and is located within the IP Industrial Park Zoning District.
- The subject site is designated Industrial Park on the General Plan Land Use/Transportation Diagram.
  - 3. The subject site is bounded by a church to the northeast, vacant properties to the southeast and southwest, and a single family residence to the northwest.
  - 4. A Conditional Use Permit is required in Industrial Park zoning districts to allow medical office facilities that will encompass more than twenty percent (20%) of the building.
  - The site is currently developed with sixteen one-story office condominium buildings, a parking lot and landscaping.
  - 6. The project proposes to allow 6.093-square-feet of medical office use within an existing industrial building.
  - 7. The project was found to be exempt from environmental review under Section 15301, Existing Facilities, of the CEQA Guidelines, which exempts existing facilities involving negligible or no expansion of use from one use to another where only minor modifications are made in the exterior of the structure.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

- 1. The proposed use at the location requested will not:
  - Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of a property of other persons located within the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
- The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this Title, or as is otherwise required in order to integrate said use with the uses in the surrounding area; and

- 3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

#### APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

- Acceptance of Permit. Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
- 2. Permit Expiration. This Conditional Use Permit shall automatically expire four years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such four-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. The Director of Planning may approve a Permit Adjustment/Amendment extending the permit in accordance with Title 20.
- 3. Sewage Treatment Demand. Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

- 4. Building Permit/Certificate of Occupancy. Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
- 5. Conformance with Plans. Construction and development shall conform to approved development plans entitled, "Hellyer Commons, LLC, 6080 Hellyer Avenue, Suite 100, 150, & 175 Conditional Use permit for Medical Office (Dentistry)" dated April 11, 2013, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24).
- 6. Parking. On May 14, 2010, a Special Use Permit (SP10-014) was approved to allow an off-site alternating parking arrangement between Hellyer Commons, LLC (subject site) and the adjacent church. This permit allows the subject building occupants of the larger office condominium development to use of up to 316 parking spaces in the church parking lot during specified business hours as noted below.
- 7. Hours of Operation. In conformance with Special Use Permit Amendment (SPA04-064-01), the subject industrial park buildings shall be closed and not in operation on Sunday, on Monday through Friday after 7:00 p.m., and on Saturday after 5:00 p.m. to allow the on-site parking to be used for the adjoining property (APN 678-08-005) and the associated church/religious assembly use.
- 8. Public Works Department Clearance. Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.
  - a. Sewage Fees: In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
- 9. Compliance with Local and State Laws. The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code or state laws. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance.
- 10. **Nuisance**. This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.

- 11. Landscaping. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
- 12. Refuse. All trash areas shall be effectively screened from view and covered, and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted. Trash areas shall be maintained in a manner to discourage illegal dumping.
- 13. Removing Graffiti. The Provider shall promptly remove all graffiti on any structure within 48 hours. In the event the Provider fails to remove all graffiti from the structure within two business days following receipt of notification from the City, the City shall have the right to remove any graffiti and the Provider shall reimburse the City for all costs incurred for the removal within 30 days of receipt of a bill for the work done.
- 14. Signs. No signs are approved with this permit.
- 15. Street Number Visibility. Street numbers of the buildings shall be easily visible from the street at all times, day and night.
- 16. Roof Equipment. No roof equipment is permitted with this permit.
- 17. Environmental Services Department. The following conditions are requirements of the Environmental Services Department:
  - Ensure trash/recycling area size, and frequency of collection, is adequate for the site operations.
  - b. For medical office operations, medical use materials may not enter solid waste stream (garbage or recycling). The facility must provide independent and appropriate disposal of these special hazardous wastes. The facility must conform to the City of San José (City) industrial waste discharge.
- 18. Fire Safety. Compliance with all applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process to the satisfaction of the Fire Chief. Prior to Building Clearance, all requirements for Fire Safety shall be met to the satisfaction of the Fire Chief including but not limited to the following:
  - a. The owner/tenant is responsible to insure that the Certificate of Occupancy matches the use of the space as defined in Chapter 3 and Table 3A of the 2001 California Building Code. The owner/tenant is responsible to post the Certificate of Occupancy in a conspicuous place in accordance with California Building Code 109.5. Contact the San José Fire Department at (408) 277-8781, to obtain Fire Department sign off after the Certificate of Occupancy is issued.

- 19. Special Waste. Include notation that medical and other special wastes may not enter solid waste stream (garbage or recycling), sanitary or storm sewer system. Facility must provide independent disposal of these special wastes.
- 20. Recycling Containers. The proposed commercial development must follow the requirements for recycling container space (in accordance with the California Public Resources Code, Chapter 18, Articles 1 and 2). When 30% or more of the original floor space is added to an existing building, provision must be made for the storage and collection of recyclables. Project plans must show the placement of recycling containers, for example, within the details of the solid waste enclosures.
- 21. Debris Recycling. It is required that scrap construction and demolition debris be recycled instead of disposing of it in a landfill (in accordance with the San José Municipal Code, Chapter 9.10 Solid Waste Management) or by contacting the Commercial Solid Waste Program at (408) 535-8550. An infrastructure exists within San José to accommodate such recycling efforts. Integrated Waste Management staff can provide assistance on how to recycle construction and demolition debris from the project, including information on where to conveniently recycle the material. Additional information may be found at <a href="http://www.sirecycles.org/construction-demolition/cddd.asp">http://www.sirecycles.org/construction-demolition/cddd.asp</a> or by contacting the Commercial Solid Waste Program at (408) 535-8550.
- 22. Food Waste Recycling. The City will be enhancing elements of the solid waste management program for commercial and industrial developments, which include the recycling of food waste and related materials starting July 2012. Such program enhancements have been addressed to the City Council for approval in March 2009. Developments will need to provide adequate space for the collection of garbage, recycling and food waste material.
- 23. Hazardous Materials. Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
- 24. Revocation, Suspension, Modification. This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Chapter 20.100.350 of the San José Municipal Code it finds:
  - A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.

ADOPTED and issued this 22<sup>nd</sup> day of May 2013, by the following vote:

AYES:

NOES:
ABSENT:
ABSTAIN:

EDESA BIT-BADAL
Chairperson

ATTEST:

JOSEPH HORWEDEL
Director of Planning, Building & Code Enforcement

d. The applicant shall obtain and operate in conformance with the conditions of all permits

required by other responsible agencies.

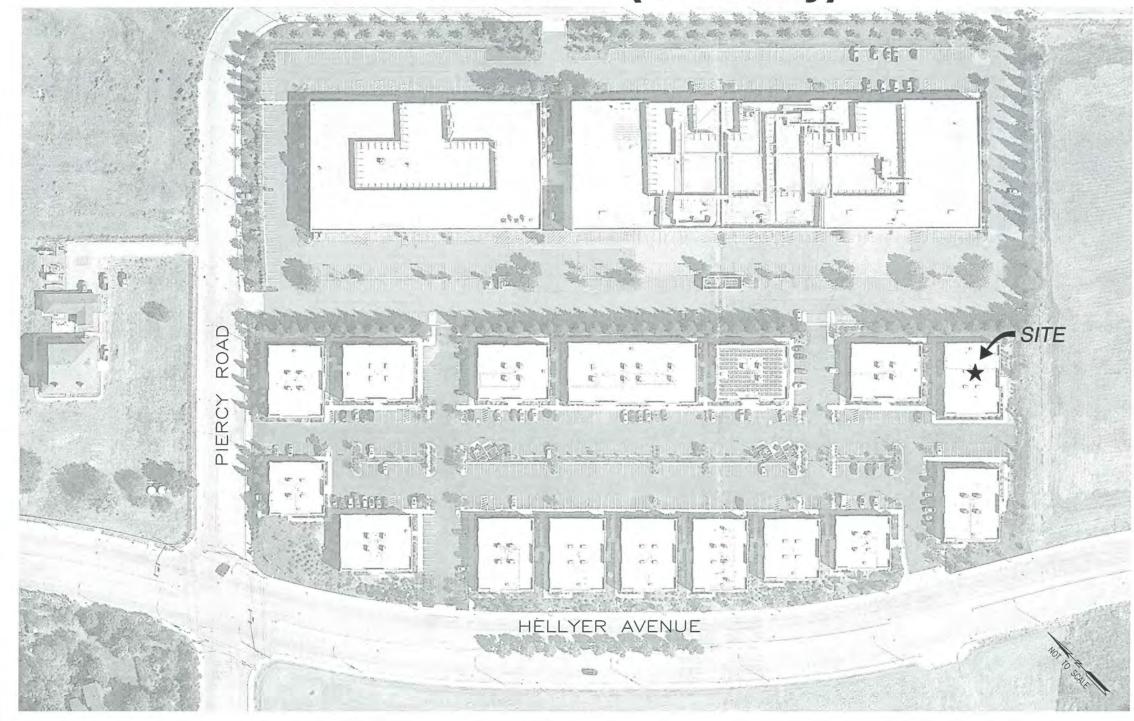
Planning Commission Secretary

#### NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

# Hellyer Commons, LLC 6080 Hellyer Avenue, Suite 100,150 & 175

Conditional Use Permit for Medical Office (Dentistry)





## Project Description:

The scope of this application is to entitle medical office (dentistry) use for the subject address. No exterior construction or modification to the existing site improvements is proposed.

### Table of Contents:

C-1 Title Sheet C-2 Site Plan

C-3 Building Plan/Elevation

CONDITIONAL USE PERMIT 6080 HELLYER AVENUE, #100,150 & 175 TITLE SHEET

Ray Shirani 841 Blossom Hill Road, Suite 20 San Jose, CA 95123

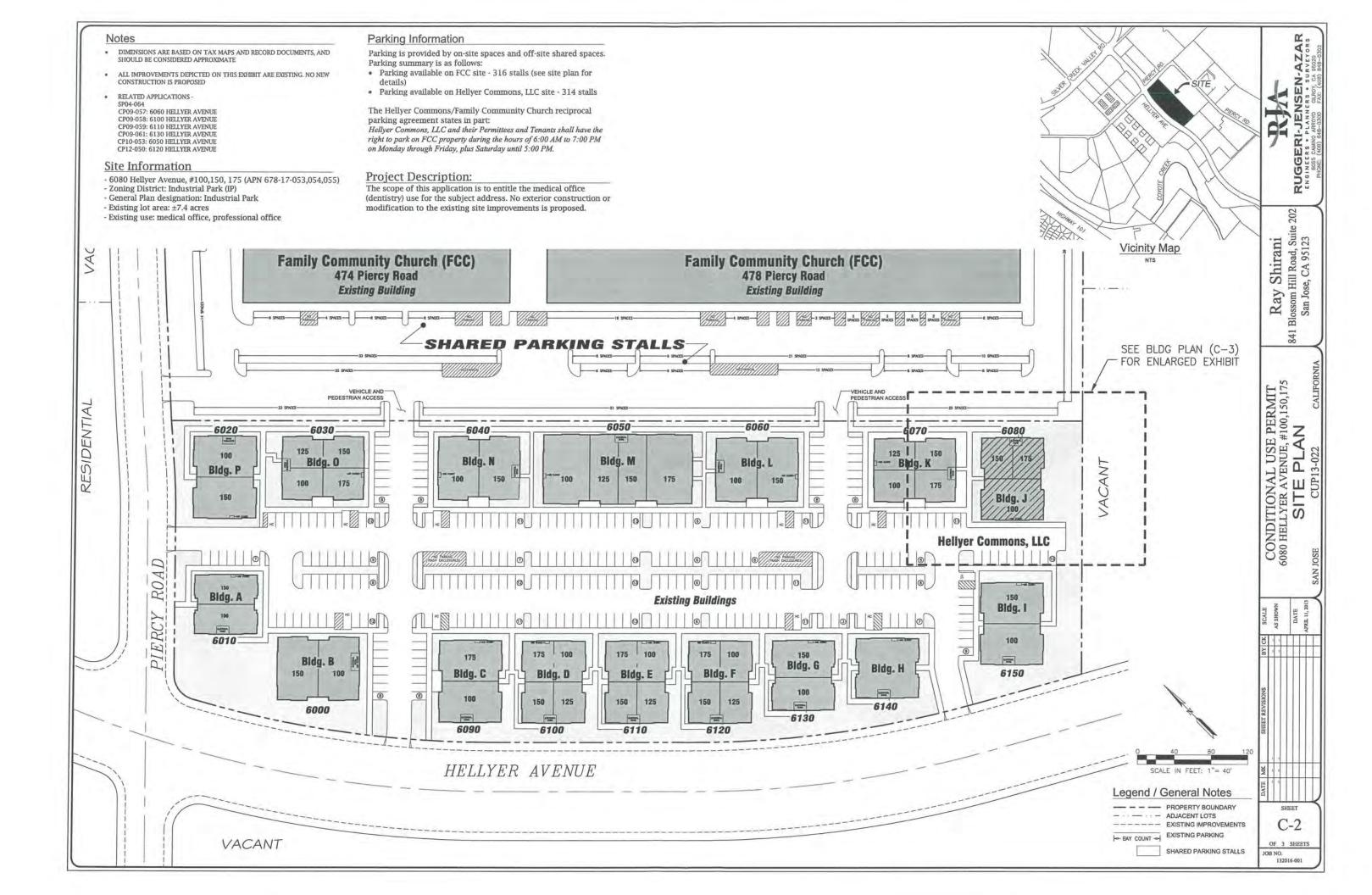
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#### **Parking Information**

Parking is provided by on-site spaces and off-site shared spaces Parking summary is as follows:

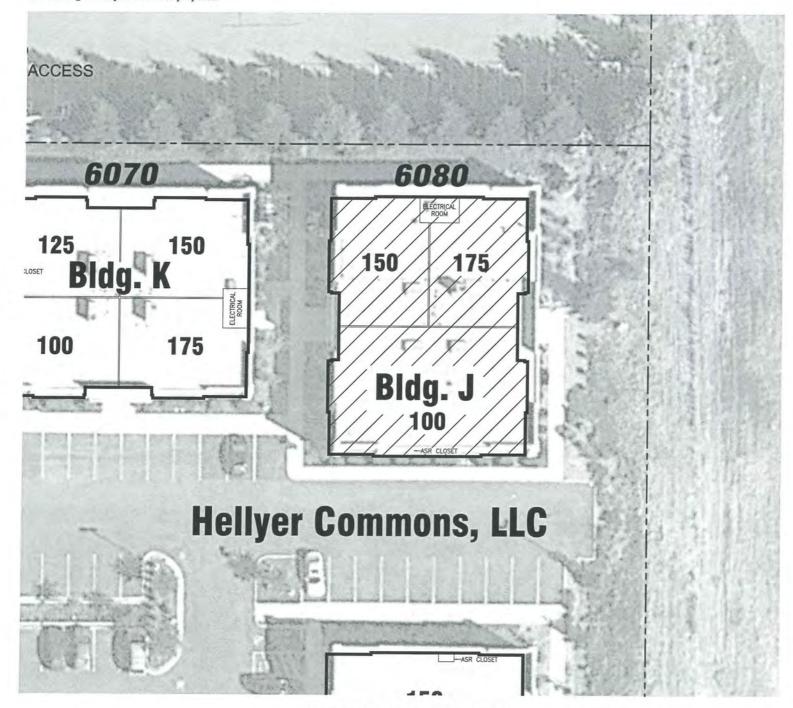
- Parking available on FCC site 316 stalls (see site plan for details)
- Parking available on Hellyer Commons, LLC site 314 stalls

The Hellyer Commons/Family Community Church reciprocal parking agreement states in part:

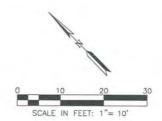
Hellyer Commons, LLC and their Permittees and Tenants shall have the right to park on FCC property during the hours of 6:00 AM to 7:00 PM on Monday through Friday, plus Saturday until 5:00 PM.

#### Project Description:

The scope of this application is to entitle the medical office (dentistry) use for the subject address. No exterior construction or modification to the existing site improvements is proposed.









SIDE ELEVATION (LOOKING SW)



FRONT ELEVATION (LOOKING SE)



FRONT ELEVATION (LOOKING SE)

Vicinity Map

Ray Shirani 841 Blossom Hill Road, Suite 202 San Jose, CA 95123

CONDITIONAL USE PERMIT 6080 HELLYER AVENUE, #100,150,175

BUILDING PLAN/ELEVATION SAN JOSE CUP13-022 CALIFORNIA

C-3

JOB NO. 132016-001